

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CAMRYN S.,

**Plaintiff.**

v.

**COMMISSIONER OF SOCIAL  
SECURITY,**

**Defendant.**

Case No. 3:20-cv-05655-TLF

# ORDER AFFIRMING DEFENDANT'S DECISION TO DENY BENEFITS

Plaintiff has brought this matter for judicial review of defendant's denial of his applications for supplemental security income ("SSI") benefits.

The parties have consented to have this matter heard by the undersigned Magistrate Judge. 28 U.S.C. § 636(c); Federal Rule of Civil Procedure 73; Local Rule MJR 13. For the reasons set forth below, the Court affirms Defendant's decision to deny benefits.

## I. ISSUES FOR REVIEW

1. Did the ALJ err in evaluating the medical opinion evidence?
  2. Did the ALJ provide clear and convincing reasons for discounting Plaintiff's testimony?

## II. BACKGROUND

Plaintiff filed a claim for child's benefits on January 26, 2012, which was denied on initial review, and later filed a claim for SSI on October 21, 2014, which was also denied. AR 15, 70.

1 Plaintiff filed a new claim for SSI on April 3, 2017, alleging a disability onset date  
2 of August 5, 1995. AR 15, 180-86. Plaintiff's claims were denied initially and upon  
3 reconsideration. AR 15, 102-05, 112-14. ALJ David Johnson held a hearing on February  
4 27, 2019. AR 34-67. On May 24, 2019, ALJ Johnson issued a decision finding that  
5 Plaintiff was not disabled. AR 12-28. On April 30, 2020, the Social Security Appeals  
6 Council denied Plaintiff's request for review. AR 1-6.

7 Plaintiff seeks judicial review of ALJ Johnson's May 24, 2019. Dkt. 6.

8                   III. STANDARD OF REVIEW

9 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's  
10 denial of Social Security benefits if the ALJ's findings are based on legal error or not  
11 supported by substantial evidence in the record as a whole. *Rerels v. Berryhill*, 874  
12 F.3d 648, 654 (9th Cir. 2017). Substantial evidence is "such relevant evidence as a  
13 reasonable mind might accept as adequate to support a conclusion." *Biestek v.*  
14 *Berryhill*, 139 S. Ct. 1148, 1154 (2019) (internal citations omitted).

15                   IV. DISCUSSION

16 In this case, the ALJ found that Plaintiff had the severe impairments of gender  
17 dysphoria, major depressive disorder, anxiety disorder, personality disorder, obesity,  
18 chronic pain syndrome, somatic pain, polyarthralgia, fibromyalgia, asthma, diarrhea,  
19 and hidradenitis suppurativa. AR 17-18. Based on the limitations stemming from  
20 Plaintiff's impairments, the ALJ found that Plaintiff could perform a full range of work at  
21 all exertional levels, with a range of work-related postural and mental limitations. AR 20.  
22 Relying on vocational expert ("VE") testimony, the ALJ found that Plaintiff could not  
23 perform his past work, but could perform other unskilled work; therefore the ALJ

1 determined at step five of the sequential evaluation that Plaintiff was not disabled. AR  
2 27-28, 60-63.

3 A. Whether the ALJ erred in evaluating the medical opinion evidence

4 Plaintiff contends that the ALJ erred in evaluating the opinions of psychologists  
5 Curtis Greenfield, Psy.D., Tasmyn Bowes, Psy.D., Keri A. Tarantino, Psy.D., and  
6 Terilee Wingate, Ph.D. Dkt. 12, pp. 3-13.

7 Under current Ninth Circuit precedent, an ALJ must provide "clear and  
8 convincing" reasons to reject the uncontradicted opinions of an examining doctor, and  
9 "specific and legitimate" reasons to reject the contradicted opinions of an examining  
10 doctor. See *Lester v. Chater*, 81 F.3d 821, 830–31 (9th Cir. 1996).

11 The Social Security Administration changed the regulations applicable to  
12 evaluation of medical opinions, eliminating a hierarchy among medical opinions, but still  
13 requiring ALJs to explain their reasoning and specifically address how they considered  
14 the supportability and consistency of each opinion. See 20 C.F.R. § 416.920c;  
15 Revisions to Rules Regarding the Evaluation of Medical Evidence, 82 Fed. Reg. 5844-  
16 01 (Jan. 18, 2017).

17 Regardless of the change to the regulations, an ALJ's reasoning must be  
18 supported by substantial evidence and free from legal error. *Ford v. Saul*, 950 F.3d  
19 1141, 1153-56 (9th Cir. 2020) (citing *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th  
20 Cir. 2008)); see also *Murray v. Heckler*, 722 F.2d 499, 501–02 (9th Cir. 1983).

21 Under 20 C.F.R. § 416.920c(a), (b)(1)-(2), the ALJ is required to explain whether  
22 the medical opinion or finding is persuasive, based on whether it is supported and

1 whether it is consistent. *Brent S. v. Commissioner, Social Security Administration*, No.  
2 6:20-CV-00206-BR, 2021 WL 147256 at \*5 - \*6 (D. Oregon January 16, 2021).

3 These are the two most important factors in the ALJ's evaluation of medical  
4 opinions or findings; therefore, “[t]he ‘more relevant the objective medical evidence and  
5 supporting explanations presented’ and the ‘more consistent’ with evidence from other  
6 sources, the more persuasive a medical opinion or prior finding.” *Linda F. v. Saul*, No.  
7 C20-5076-MAT, 2020 WL 6544628, at \*2 (quoting 20 C.F.R. § 404.1520c(c)(1)-(2)).

8       1. Dr. Greenfield and Dr. Bowes

9 Psychologist Dr. Greenfield examined Plaintiff for the Washington Department of  
10 Social and Health Services (“DSHS”) on October 19, 2017. AR 581-85. Dr. Greenfield’s  
11 evaluation consisted of a clinical interview, a mental status examination, and a review of  
12 the available medical evidence. Based on this evaluation, Dr. Greenfield opined that  
13 Plaintiff would have a range of moderate, marked, and severe work-related limitations,  
14 and that Plaintiff’s overall degree of limitation was marked. AR 583.

15       On November 2, 2017, Dr. Bowes performed a review of the medical evidence  
16 for DSHS and concurred with Dr. Greenfield’s opinion. AR 586-89.

17       The ALJ found the opinions of Dr. Greenfield and Dr. Bowes unpersuasive,  
18 reasoning that they were: (1) inconsistent with the medical record; (2) based on  
19 statements from Plaintiff not supported by the medical record; and (3) inconsistent with  
20 Plaintiff’s self-reported activities of daily living. AR 26.

21       With respect to the ALJ’s first two reasons, the new regulations require the ALJ  
22 to consider the “consistency” of a medical source’s opinion with the evidence from other  
23 medical sources and nonmedical sources in the claim; the more consistent the medical  
24

1 opinion is with this evidence, the more persuasive the medical opinion will be. 20 C.F.R.  
2 § 416.920c(c)(2); *Ghanim v. Colvin*, 763 F.3d 1154, 1161 (9th Cir. 2014) (An ALJ may  
3 give less weight to medical opinions that conflict with treatment notes).

4 The new regulations also require an ALJ to consider the “supportability” of a  
5 medical opinion, meaning that the “more relevant the objective medical evidence and  
6 supporting explanations presented by a medical source are to support his or her  
7 medical opinion(s) ... the more persuasive the medical opinions” will be. 20 C.F.R. §  
8 416.920c(c)(1).

9 Here, the ALJ found that during the period at issue, Plaintiff typically exhibited  
10 normal mood and affect and intact cognition, insight, and judgment, and that Plaintiff’s  
11 report that he has suffered from hallucinations for 10 years was not supported by the  
12 available evidence; the ALJ’s findings are supported by the medical record. AR 26, 539,  
13 563, 574, 582, 584-85, 595, 601, 609, 613, 616, 622, 629, 634, 638, 694, 702, 711, 808,  
14 814, 817.

15 Accordingly, the ALJ has provided valid reasons, supported by substantial  
16 evidence, for discounting the opinions of Dr. Greenfield and Dr. Bowes.

17 2. Dr. Tarantino

18 Psychologist Dr. Tarantino examined Plaintiff on August 20, 2017. AR 560-65.  
19 Dr. Tarantino’s evaluation consisted of a clinical interview, a mental status examination,  
20 and a review of the available evidence. Based on this evaluation, Dr. Tarantino opined  
21 that Plaintiff would have difficulty performing detailed and complex tasks, interacting  
22 with co-workers and the public, performing work activities on a consistent basis,  
23 maintaining regular workplace attendance, completing a normal work day or work week

24

25

1 without interruption from psychiatric symptoms, and dealing with the usual stress  
2 encountered in the workplace. AR 564-65.

3       The ALJ found Dr. Tarantino's opinion unpersuasive for the same reasons he  
4 discounted the opinions of Dr. Greenfield and Dr. Bowes. AR 26. For the reasons  
5 discussed above, the ALJ has provided valid reasons, supported by substantial  
6 evidence, for discounting Dr. Tarantino's opinion. See *supra* Section A.1.

7           3. Dr. Wingate

8       Dr. Wingate examined Plaintiff on November 24, 2015 for DSHS. AR 496-503.  
9 Dr. Wingate's evaluation consisted of a clinical interview, a mental status examination,  
10 and a review of the available evidence. Based on this evaluation, Dr. Wingate opined  
11 that Plaintiff would have a range of moderate work-related mental limitations. AR 498.

12      The ALJ found Dr. Wingate's opinion unpersuasive, reasoning that it was  
13 rendered long before Plaintiff filed his SSI application, and does not provide an accurate  
14 assessment of Plaintiff's functioning during the period at issue. AR 25.

15      Medical opinions rendered long before the period at issue can be of limited  
16 probative value in ascertaining a claimant's functional capacity after his or her alleged  
17 onset date. See *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1165 (9th Cir.  
18 2008) (stating that "[m]edical opinions that predate the alleged onset of disability are of  
19 limited relevance"). Under Social Security regulations, in order to evaluate an SSI  
20 claimant's "complete medical history" the agency is required to consider medical  
21 records for "at least" the 12 months preceding the month a claimant files an application.  
22 20 C.F.R. § 416.912(b)(1)(ii).

1 Dr. Wingate's opinion was rendered approximately one year and five months  
2 before Plaintiff filed his SSI application, and the ALJ's conclusion that it was not  
3 probative concerning Plaintiff's functioning during the period at issue is supported by  
4 substantial evidence.

5 Further, even if Dr. Wingate's opinion was rendered during the period at issue,  
6 any error in the ALJ's evaluation would likely be harmless. *Molina v. Astrue*, 674 F.3d  
7 1104, 1115 (9th Cir. 2012) (Harmless error principles apply in the Social Security  
8 context). Dr. Wingate assessed Plaintiff as having no more than moderate work-related  
9 limitations, and in assessing Plaintiff's residual functional capacity ("RFC") the ALJ  
10 restricted Plaintiff to performing simple, routine tasks, with no more than occasional  
11 superficial with others, limitations broadly consistent with the restrictions contained in  
12 Dr. Wingate's opinion. AR 20.

13 Accordingly, the ALJ did not err in evaluating the medical opinion evidence.

14 B. Whether the ALJ provided clear and convincing reasons for discounting  
Plaintiff's testimony

15 Plaintiff contends that the ALJ erred by not providing clear and convincing  
16 reasons for discounting his testimony. Dkt. 12, pp. 13-17.

17 In weighing a claimant's testimony, an ALJ must use a two-step process. *Trevizo*  
18 v. *Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017). First, the ALJ must determine whether  
19 there is objective medical evidence of an underlying impairment that could reasonably  
20 be expected to produce some degree of the alleged symptoms. *Ghanim v. Colvin*, 763  
21 F.3d 1154, 1163 (9<sup>th</sup> Cir. 2014). If the first step is satisfied, and provided there is no  
22 evidence of malingering, the second step allows the ALJ to reject the claimant's  
23

1 testimony of the severity of symptoms if the ALJ can provide specific findings and clear  
 2 and convincing reasons for rejecting the claimant's testimony. *Id.*

3 In discounting Plaintiff's symptom testimony, the ALJ reasoned that: (1) Plaintiff's  
 4 allegations concerning his physical and mental impairments were inconsistent with the  
 5 medical record; (2) Plaintiff's physical and mental impairments improved with treatment;  
 6 and (3) Plaintiff did not follow treatment recommendations. AR 22-24.

7 With respect to the ALJ's first reason, inconsistency with the objective evidence  
 8 may serve as a clear and convincing reason for discounting a claimant's testimony.

9 *Regennitter v. Commissioner of Social Sec. Admin.*, 166 F.3d 1294, 1297 (9th Cir.  
 10 1998). But an ALJ may not reject a claimant's subjective symptom testimony "solely  
 11 because the degree of pain alleged is not supported by objective medical evidence."  
 12 *Orteza v. Shalala*, 50 F.3d 748, 749-50 (9th Cir. 1995) (internal quotation marks  
 13 omitted, and emphasis added); *Byrnes v. Shalala*, 60 F.3d 639, 641-42 (9th Cir. 1995)  
 14 (applying rule to subjective complaints other than pain).

15 For the reasons discussed above, the ALJ's finding that Plaintiff's testimony  
 16 concerning his mental health impairments was inconsistent with the record is supported  
 17 by substantial evidence. AR 24; *see supra* Section A. With respect to Plaintiff's physical  
 18 impairments, the ALJ found that despite Plaintiff's complaints of pain, on examination  
 19 Plaintiff typically exhibited a good range of motion, intact sensation and motor function  
 20 in his extremities, and a normal gait. AR 23, 625, 634, 694, 701-02, 825-26, 834, 861,  
 21 863, 865, 874, 879. Accordingly, the ALJ's finding that Plaintiff's allegations concerning  
 22 his physical and mental impairment were inconsistent with the medical record is  
 23 supported by substantial evidence.

24  
 25

1       In citing the improvement in Plaintiff's physical and mental impairments with  
2 conservative treatment, the ALJ has provided an additional clear and convincing reason  
3 for discounting his testimony. A finding that a claimant's impairments are successfully  
4 managed with conservative treatment can serve as a clear and convincing reason for  
5 discounting a claimant's testimony. See 20 C.F.R. § 416.929(c)(3)(iv) (the effectiveness  
6 of medication and treatment are relevant to the evaluation of a claimant's alleged  
7 symptoms); *Wellington v. Berryhill*, 878 F.3d 867, 876 (9th Cir. 2017) (evidence of  
8 medical treatment successfully relieving symptoms can undermine a claim of disability);  
9 *Tommasetti v. Astrue*, 533 F.3d 1035, 1040 (9th Cir. 2008) (citing *Parra v. Astrue*, 481  
10 F.3d 742, 750–51 (9th Cir.2007) (stating that “evidence of ‘conservative treatment’ is  
11 sufficient to discount a claimant's testimony regarding severity of an impairment”).

12       With respect to Plaintiff's physical impairments, the ALJ found that Plaintiff  
13 experienced improvement with conservative measures such as physical therapy, over  
14 the counter pain medication, heating pads, and osteopathic manipulative medicine. AR  
15 22-23, 593, 596, 611-12, 614, 617, 716, 723, 737, 755, 758-59.

16       As for Plaintiff's mental health impairments, the ALJ found that despite Plaintiff's  
17 initial reluctance to pursue treatment, his treatment providers reported that he  
18 responded well to therapy. AR 24, 648, 652, 655, 664, 670, 768, 776, 779, 798, 801,  
19 806.

20       The ALJ's finding that Plaintiff's physical and mental symptoms improved with  
21 treatment is supported by substantial evidence, and the ALJ has provided clear and  
22 convincing reasons for discounting his testimony.

## CONCLUSION

Based on the foregoing discussion, the Court finds the ALJ properly determined Plaintiff to be not disabled. Defendant's decision to deny benefits therefore is AFFIRMED.

Dated this 21st day of September, 2021.

Theresa L. Fricke

**Theresa L. Fricke  
United States Magistrate Judge**